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EXAMINER

BURCH, MELODY M

ART UNIT PAPER NUMBER

3683

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/976,527

Applicant(s)

BLAKE, ROBERT B.

Examiner

Melody M. Burch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-13, 16-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 10, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hitch first claimed in line 3 of claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claim 6 is objected to because of the following informalities: the phrase "cover plate further comprises" in line 2 reads as if other elements of the cover plate were previously recited. Appropriate correction is required.

3. Claim 14 is objected to because of the following informalities: the term "sidewalls" in line 2 should be changed to --side walls-- to be consistent with the form used in claim 13. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. Claims 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claims 16 and 17. The phrase "said cover" first claimed in line 2 of claim 16 lacks proper antecedent basis in the claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by JP-1267191 (JP '191).

JP '191 shows in figure 2 a hitch cover assembly comprising a main body 11 for connection to a hitch tube 2 and having a front face shown at the top of element 11 with an opening adapted to allow passage of a hitch 34 into an open end of the hitch tube as shown in figure 4 and opposed side walls 11a, 11b extending from the front face via intervening portions of element 11, a movable cover plate 10 hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end, wherein the main body includes a plurality of apertures shown in the area of the lead lines of numbers 13 and 19 extending through the sidewalls.

Examiner notes that Applicant has removed the limitation of the hitch cover assembly specifically being a trailer hitch cover assembly. It is further noted that according to Webster's Collegiate Dictionary 13<sup>th</sup> Edition, a hitch cover assembly is a cover assembly for a connection between an implement (which is a device used in the performance of a task) and a source of power capable of being detached.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3-8, 11, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4141569 to Dilk in view of US Patent 2035486 to Larson.

Re: claims 1, 4, and 20. Dilk shows in figure 1 a trailer hitch cover assembly comprising: a main body shown in the area of element 18 having an aperture or opening shown in the area of the lead line of number 54 adapted to fit over a hitch element 16 to allow insertion of a hitch or unnumbered element shown immediately below element 16 into the hitch element, an insulating member or air, as broadly claimed, adapted to be disposed over the hitch element and between the main body and the hitch element, and a rotatable cover plate 34 connected to the main body and being movable between a closed position and an open position for closing and opening the aperture.

Dilk does not specifically show or disclose the hitch element being a hitch tube.

Larson teaches in figure 2 the use of a hitch element being specifically in the form of a hitch tube "s".

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hitch element of Dilk to have been constructed in the form of a hitch tube, as taught by Larson, in order to provide a means of securely attaching the hitch to the hitch element while reducing the risk of hitch fallout.

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Re: claim 3. Dilk, as modified, teaches in figures 1 and 4 of Dilk the limitation wherein the main body further comprises at least one aperture 66,68 extending therethrough adapted to allow passage of a lock pin 46.

Re: claim 5. Dilk, as modified, teaches in figures 1 and 2 of Dilk the limitation wherein the main body further comprises at least one first hinge knuckle 74.

Re: claim 6. Dilk, as modified, teaches in figures 1 and 2 of Dilk the limitation wherein the cover plate further comprises at least one second hinge knuckle 76.

Re: claim 7. Dilk, as modified, teaches in figures 1 and 4 the limitation wherein the assembly includes a hinge pin 88 extending through the at least one first hinge knuckle and the at least one second hinge knuckle to allow the cover plate to rotate about the hinge pin between the closed position and the open position.

Re: claim 8. Dilk, as modified, teaches in figures 1 and 4 the limitation wherein the main body includes a plurality of apertures (one in the area of the lead arrow of number 54 and one in the area of the element 66) extending therethrough.

Re: claim 11. Dilk, as modified, teaches in figure 1 of Dilk the limitation wherein the cover plate includes a plurality of raised elements 36,58.

9. Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '191 in view of US Patent 4196918 to Strader.

Re: claims 2 and 13. JP '191 shows in figure 2 the use of a hitch cover assembly comprising: a main body 11 having an open portion adapted to fit over a hitch tube 2 and to allow insertion of a hitch 34 shown in figure 4 into an open end of the hitch tube, a cover 10 hingedly connected to the main body and being movable between a closed

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position and an open position for opening and closing the open end, and wherein the main body is arranged to retain the main body on the hitch tube as shown in figure 2.

(Re: claim 13. JP '191 shows the use of an insulating member or air, as broadly claimed and the limitation of the main body including opposed side walls 11a,11b extending from the front face.)

JP '191 does not include the limitation of the retention of the main body on the hitch tube resulting from the use of at least one deflectable tab.

Strader teaches in figure 4 the use of a main body including at least one deflectable tab 46 to retain a main body 36 on a hitch tube 28.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the retention means of the main body on the hitch tube of JP '191 to have included the use of at least one deflectable tab, as taught by Strader, in order to provide a means of helping to securely mount the main body on the hitch tube.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claim 18 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09982619 in view of US Patent 5603178 to Morrison. Both applications claim a trailer hitch cover assembly comprising a main body or hitch insert having an aperture or opening, a movable cover plate hingedly connected or rotatable door, and the main body or insert including at least one aperture extending through the sidewalls, but the instant application does not include the limitation of the cover assembly being used for a motor vehicle and the '619 application does not include the limitation of the at least one aperture being a plurality of apertures.

Morrison shows in the figure on the front of the patent a hitch cover assembly being used for a motor vehicle 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hitch cover assembly of the instant invention to have been utilized in the environment of a motor vehicle to protect the hitch tube of the vehicle from debris.

With regards to the plurality of apertures. In *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) the courts held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the at least one aperture of application '619 to have included a plurality of apertures in order to provide additional holes to reliably connect with the locking pin.



This is a provisional obviousness-type double patenting rejection.

12. Claims 1, 12, and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6176506 to Blake in view of Morrison and Ponder. Both application and patent claim a trailer hitch cover assembly comprising a hitch insert or main body having an aperture or opening, an insulating member or anti-vibration mechanism between the hitch insert or main body and the hitch tube, and a cover plate but the instant application does not include the limitation of the cover assembly being for a motor vehicle, and the patent does not include the limitation of a cover plate being hingedly connected. The instant application is broader than the claim of the patent with respect to the top cover plate and is therefore covered by *In re Goodman*, 29 USPQ 2d 2010 (Fed. Cir. 1993) in which the court held that for the purposes of obvious double patenting a later genus (broad) claim is not patentable over an earlier species (narrow).

Morrison shows in the figure on the front of the patent a hitch cover assembly being used for a motor vehicle 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hitch cover assembly of the instant invention to have been utilized in the environment of a motor vehicle to protect the hitch tube of the vehicle from debris.

Ponder teaches in figures 1 and 3 the use of a hitch device cover assembly having a cover plate 14 hingedly connected to a main body 10 and being movable between a closed position and an open position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hitch

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cover assembly of the patent to have included a hitch device cover assembly having a rotatable cover plate, as taught by Ponder, in order to provide a structure that enables the locking of the hitch device to prevent theft of a towed trailer vehicle as taught in the abstract of Ponder.

13. Claims 1, 12, and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5934699 to Blake in view of Strader. Both application and patent claim a trailer hitch cover assembly comprising a hitch insert or main body having an aperture or opening, and a cover plate or door hingedly or pivotally connected, but the instant application does not include the limitation of the cover assembly being for a motor vehicle or the limitation of a top cover plate and a front cover plate and the patent does not include the limitation of an insulating member. The instant application is broader than the claim of the patent with respect to the top and front cover plates and the functional use in a motor vehicle environment and is therefore covered by *In re Goodman*, 29 USPQ 2d 2010 (Fed. Cir. 1993) in which the court held that for the purposes of obvious double patenting a later genus (broad) claim is not patentable over an earlier species (narrow).

Strader teaches in figures 1 and 4 the use of an insulating member 88,70,72 adapted to be disposed over the hitch tube and between the main body and the hitch tube. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the cover assembly of the Blake patent to have

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included an insulating member, as taught by Strader, in order to provide a means of absorbing vibrations between the two components.

***Allowable Subject Matter***

14. Claims 9 and 19 are allowed.

15. Claims 10, 14, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Claims 16 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

17. Applicant's arguments with respect to the claims with regards to the art rejections have been considered but are moot in view of the new ground(s) of rejection.

18. Applicant's arguments filed 9/2/03 regarding the double patenting rejections have been fully considered but they are not persuasive. Examiner notes that Applicant has argued the references in the obviousness-type double patenting rejections individually. It emphasized that it is the *combination* of the references set forth above that result in the double patenting rejections.

***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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November 23, 2003

  
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SUPERVISORY PATENT EXAMINER  
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